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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,092	01/16/2004	Gilles Belot	85382-102 RWD	5266
23529	7590	05/06/2005	EXAMINER	
ADE & COMPANY 1700-360 MAIN STREET WINNIPEG, MB R3C3Z3 CANADA			GROSSO, HARRY A	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,092

Applicant(s)

BELOT, GILLES

Examiner

Harry A. Grosso

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-10, drawn to a container, classified in class 220, subclass 676.
 - II. Claims 1-20, drawn to a method of using a container, classified in class 53, subclass 235.
2. Inventions of Group I and Group II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the container can be used without utilization of the scoop inserted through the scoop opening.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Ryan Dupuis on March 11, 2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Luescher (5,540,351).

7. Regarding claims 1 and 2, Luescher discloses a container with walls surrounding the interior, a scoop opening (13a, Figure 1), and an access opening in the top of the container that is in communication with the scoop opening.

8. Regarding claims 3-5, Luescher discloses the container has a base portion and a lid portion separable from each other (10, 11, Figures 1 and 2), the scoop opening is in the base portion and a slot at the seam between the lid and the base extends to the scoop opening as shown in Figure 2.

9. Claims 1, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Guard (5,377,907). Guard discloses a container with surrounding walls (10, Figure 1) and scoop openings (136). The scoop opening has a flexible gate member and a shelf projecting outwardly from the container below the scoop opening (138, 147, Figures 5-6, column 5, lines 41-46 and 57-61).

10. Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Delmerico et al (6,241,115). Delmerico et al discloses a container with surrounding

walls, a scoop opening (65, Figure 1) and a liner hanger supported in the walls of the interior of the container (Figures 3 and 5, column 5, lines 50-64).

11. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Culling (1,618,366). Culling discloses a container with surrounding walls and a scoop, opening in the wall (27, Figures 1-2). Culling further discloses that the bottom wall (base) is made of concrete, which is fireproof and provides insulation (lines 45-51).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luescher in view of Hisamitsu (JP 08-140839, June 4, 1996). Luescher discloses the container of claim 1 as discussed in paragraph 7 above but does not teach the use of a receptacle for the scoop. Hisamitsu discloses a container with an open top receptacle on the outer side of the wall for holding a scoop (10, Figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of an open top receptacle on the outer side of the wall for holding a scoop as disclosed by Hisamitsu in the container disclosed by Luescher to provide a means of storing the scoop and keeping it with the container.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday and alternate Fridays from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lee Young
Supervisory Patent Examiner
Art Unit 3727

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